

ESTTA Tracking number: **ESTTA617905**

Filing date: **07/28/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Premio Foods, Inc.
Granted to Date of previous extension	07/30/2014
Address	365 West Passaic St. Rochelle Park, NJ 07662 UNITED STATES
Attorney information	Samuel D. Littlepage DICKINSON WRIGHT PLLC 1875 Eye Street, NW#1200 Washington,, DC 20006 UNITED STATES trademark@dickinsonwright.com, slittlepage@dickinsonwright.com, slustig@dickinsonwright.com, malcantara@dickinsonwright.com

Applicant Information

Application No	85558771	Publication date	04/01/2014
Opposition Filing Date	07/28/2014	Opposition Period Ends	07/30/2014
Applicant	EDS Manufacturing, LLC 26661 Bunert Road Warren, MI 48089 UNITED STATES		

Goods/Services Affected by Opposition


Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fruit salads and vegetable salads
Class 030. First Use: 2007/05/01 First Use In Commerce: 2007/05/01 All goods and services in the class are opposed, namely: Packaged foods, namely, deli sandwiches

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3443606	Application Date	02/08/2007
Registration Date	06/10/2008	Foreign Priority Date	NONE

Word Mark	PREMIO
Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2000/04/00 First Use In Commerce: 2000/04/00 Sausages

Related Proceedings	Opposition No. 91206407
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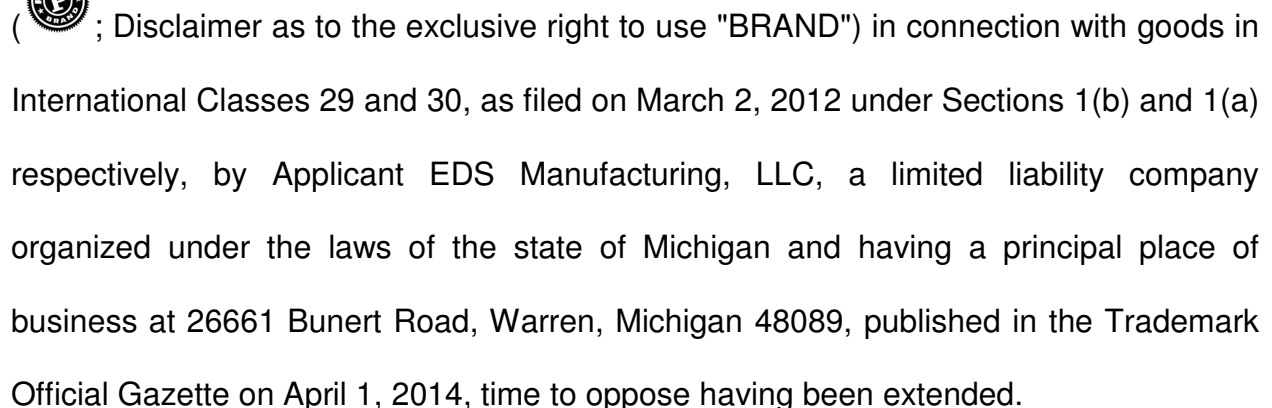
Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Steven D. Lustig/
Name	Steven D. Lustig
Date	07/28/2014

PREMIO FOODS, INC.,
Opposer,
v.
EDS MANUFACTURING, LLC,
Applicant.

Opposer, Premio Foods, Inc., a corporation duly organized under the laws of the state of New Jersey and having a principal place of business at 365 West Passaic St., Rochelle Park, New Jersey 07662, believes that it would be damaged by the registration of U.S. Application Serial No. 85/558771 for the mark P PREMIO BRAND and Design



The grounds for this opposition under Section 2 of the Lanham Act are as follows:

1. Since long prior to May 1, 2007, Applicant's alleged date of first use and first use in commerce of the goods in Int. Class 30, as well as long prior to the constructive date of first use of the goods in Int. Cl. 29 (based on the application's filing date of March 2, 2012), Opposer has continuously used in commerce the mark PREMIO in connection with the sale of sausage products. As a result of Opposer's use, promotion, and advertising of the PREMIO mark, it has become well known in many parts of the United States, including the state of Michigan where Applicant does business using the mark herein opposed.

2. Opposer is the present owner of Registration No. 3,443,606 for the PREMIO mark and that registration is valid and in effect. A certified status and title copy of that registration will be provided at a later date in this proceeding.

3. Applicant's mark, P PREMO BRAND and Design, is in all respects so confusingly similar in sight, sound and commercial impression to Opposer's registered PREMIO mark as to be likely, when applied to the products of Applicant, to cause confusion, mistake or deception, leading purchasers of Applicant's goods to the mistaken belief that the goods of Applicant emanate from Opposer, or are disseminated under Opposer's approval, sponsorship, or control, all to the harm and damage of Opposer in violation of Section 2(d) of the Lanham Act.

4. The goods of the Applicant, as described in its application in Int. Classes 29 and 30, are closely related to the sausage products offered and sold by Opposer under its aforesaid registrations and are likely to be purchased and used by the same class of consumers. As a result of the similarity between the marks and the relationship

between the goods of the parties, purchasers of Applicant's products are apt to believe that the P PREMO BRAND branded products are somehow connected with, or endorsed or sponsored by, Opposer, all to the harm and detriment of Opposer.

5. Opposer, over a period of fourteen years, has expended enormous amounts of time, effort and expense in promoting the sale of its goods and encouraging the public and trade to recognize its products under the PREMIO mark. The registration of essentially the identical mark, P PREMO BRAND, for food products would enable the Applicant to reap the benefits of the goodwill and reputation attached to Opposer's mark as a result of the confusion that is likely to occur, all to Opposer's irreparable harm and damage.

6. Because of the similarities between Applicant's P PREMO BRAND mark and Opposer's PREMIO mark in appearance, sound and commercial impression, and in light of the related nature of the goods sold under the marks, Opposer alleges that Applicant's mark consists of or comprises matter that is likely to suggest a trade connection between them, all in violation of Section 2(a) of the Lanham Act.

WHEREFORE, Opposer, through its counsel, respectfully requests that the mark sought to be registered by Applicant be refused and this Opposition be sustained.

PREMIO FOODS, INC.



Dated: July 28, 2014

By:

Samuel D. Littlepage, Esq.
Steven D. Lustig, Esq.
Melissa A. Alcantara, Esq.
DICKINSON WRIGHT PLLC
1875 Eye Street, NW, #1200
Washington, D.C. 20006
(202) 457-0160
Fax (202) 659-1559

Counsel for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Opposer's Notice of Opposition has been served upon Applicant's counsel of record on July 28, 2014, via first class mail, postage prepaid, as identified below:

James D Stevens
Richard W. Hoffmann
REISING ETHINGTON PC
PO Box 4390
Troy, MI 48099-4390

A handwritten signature in black ink, appearing to read 'S. Lustig', with a long horizontal stroke extending to the right.

Steven D. Lustig